

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	Consolidated Cases:
STATE OF NEW YORK, ET AL.,	)	Civil Action No. C2-99-1182
	)	Civil Action No. C2-99-1250
Plaintiff-Intervenors,	)	JUDGE EDMUND A. SARGUS, JR.
	)	Magistrate Judge Kimberly A. Jolson
v.	)	
	)	
AMERICAN ELECTRIC POWER	)	
SERVICE CORP., ET AL.,	)	
	)	
Defendants.	)	
<hr style="width: 40%; margin-left: 0;"/>	)	
OHIO CITIZEN ACTION, ET AL.,	)	Civil Action No. C2-04-1098
	)	JUDGE EDMUND A. SARGUS, JR.
Plaintiffs,	)	Magistrate Judge Kimberly A. Jolson
	)	
v.	)	
	)	
AMERICAN ELECTRIC POWER	)	
SERVICE CORP., ET AL.,	)	
	)	
Defendants.	)	
<hr style="width: 40%; margin-left: 0;"/>	)	
UNITED STATES OF AMERICA	)	
	)	Civil Action No. C2-05-360
Plaintiff,	)	JUDGE EDMUND A. SARGUS, JR.
	)	Magistrate Judge Kimberly A. Jolson
v.	)	
	)	
AMERICAN ELECTRIC POWER	)	
SERVICE CORP., ET AL.,	)	
	)	
Defendants.	)	
<hr style="width: 40%; margin-left: 0;"/>	)	

## **SIXTH JOINT MODIFICATION TO CONSENT DECREE**

WHEREAS, On December 10, 2007, this Court entered a Consent Decree in the above-captioned matters (Case No. 99-1250, Docket # 363; Case No. 99-1182, Docket # 508).

WHEREAS, Paragraph 199 of the Consent Decree provides that the terms of the Consent Decree may be modified only by a subsequent written agreement signed by the Plaintiffs and Defendants. Material modifications shall be effective only upon written approval by the Court.

WHEREAS, the Consent Decree has been modified five times, see Joint Modification to Consent Decree With Order Modifying Consent Decree filed on April 5, 2010 (Case No. 99-1250, Docket # 371), Second Joint Modification to Consent Decree with Order Modifying Consent Decree filed on December 28, 2010 (Case No. 99-1250, Docket # 372), Third Joint Modification With Order Modifying Consent Decree filed on May 14, 2013 (Case No. 99-1182, Docket # 548), Agreed Entry Approving Fourth Joint Modification to Consent Decree filed on January 23, 2017 (Case No. 99-1182, Docket # 553), and Fifth Joint Modification to Consent Decree with Order Modifying the Consent Decree filed on July 17, 2019 (Case 99-1182, Docket Entry # 606).

WHEREAS, the Parties have agreed to a sixth joint modification of the Consent Decree that modifies Section XVIII (Notices) and Appendix A of the Consent Decree.

WHEREAS, Section XVIII (Notices) is modified to allow notifications, submissions, and communications to be submitted electronically.

WHEREAS, Appendix A Environmental Mitigation Projects requires, *inter alia*, American Electric Power (AEP) to perform Mobile Source Emission Reduction Projects which include a Diesel Tug/Train Project, a Hybrid Vehicle Fleet Project, and a Truck Stop Electrification Project.

WHEREAS, AEP, due to unexpected difficulties in implementation, has requested the ability to expand the types of Mobile Source Emission Reduction Projects included in Appendix A.

WHEREAS, the Parties have agreed to expand the Mobile Source Emission Reduction Projects to include Bus Replacement Projects.

WHEREAS, the Parties agree that this Sixth Joint Modification is a non-material modification that, pursuant to Paragraph 199, does not require written approval by the Court.

NOW THEREFORE, the Parties hereby modify the Consent Decree, as amended by the first five modifications, as follows:

*I. Replace Section XVIII (Notices) with the following:*

XVIII. NOTICES

188. Unless otherwise provided herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in the manner specified herein.

**As to the United States:**

**As to DOJ:**

By email:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
eescdcopy.enrd@usdoj.gov  
Referencing DJ# 90-5-2-1-06893 in the subject line of the email

**As to U.S. EPA:**

By uploading an electronic version of the submission to the cdx system at: <https://cdx.epa.gov>.

And by email to:

r5ardreporting@epa.gov

willard.erinm@epa.gov

And, unless otherwise agreed in writing by the submitter and EPA, a hard copy shall be sent to one of the following addresses for overnight delivery:

By U.S. Mail:

Director, Air Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency Mail Code 2242A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Or by commercial delivery service:

Air Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Ariel Rios South Building, Room 1119  
1200 Pennsylvania Avenue, NW  
Washington, DC 20004

**As to the States:**

As to the State of Connecticut:

Lori D. DiBella  
Assistant Attorney General  
Office of the Attorney General  
Environment Department  
165 Capitol Avenue  
Hartford, CT 06106  
Lori.dibella@ct.gov

As to the State of Maryland:

Frank Courtright  
Program Manager  
Air Quality Compliance Program  
Maryland Department of the Environment  
1800 Washington Blvd.  
Baltimore, Maryland 21230  
fcourtright@mde.state.md.us

and

Matthew Zimmerman  
Assistant Attorney General  
Office of the Attorney General  
1800 Washington Boulevard  
Baltimore, MD 21230  
[mzimmerman@mde.state.md.us](mailto:mzimmerman@mde.state.md.us)

As to the Commonwealth of Massachusetts:

Christophe Courchesne, Assistant Attorney General  
Office of the Attorney General  
1 Ashburton Place, 18th floor  
Boston, Massachusetts 02108  
[Christophe.courchesne@state.ma.us](mailto:Christophe.courchesne@state.ma.us)

As to the State of New Hampshire:

Director, Air Resources Division  
New Hampshire Department of Environmental Services  
29 Hazen Drive  
Concord, New Hampshire 03302-0095

and

K. Allen Brooks  
Senior Assistant Attorney General  
Office of the Attorney General  
33 Capitol Street  
Concord, New Hampshire 03301  
[Allen.brooks@doj.nh.gov](mailto:Allen.brooks@doj.nh.gov)

As to the State of New Jersey:

Lisa Morelli  
Deputy Attorney General  
Environmental Enforcement  
Dept. of Law & Public Safety  
Division of Law  
R.J. Hughes Justice Complex  
25 Market Street  
P.O. Box 093  
Trenton, New Jersey 08625-0093  
[lisa.morelli@law.njoag.gov](mailto:lisa.morelli@law.njoag.gov)

As to the State of New York:

Michael J. Myers  
Senior Counsel  
Environmental Protection Bureau  
New York State Attorney General  
The Capitol  
Albany, New York 12224  
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As to the State of Rhode Island:

Gregory S. Schultz  
Special Assistant Attorney General  
150 South Main Street  
Providence, RI 02903  
[gschultz@riag.ri.gov](mailto:gschultz@riag.ri.gov)

As to the State of Vermont:

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Assistant Attorney General  
Office of the Attorney General  
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Montpelier, Vermont 05609-1001  
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**As to the Citizen Plaintiffs:**

Nancy S. Marks  
Natural Resources Defense Council, Inc.  
40 West 20th Street  
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2101 Webster Street, Suite 1300  
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Margrethe Kearney  
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and

Shannon Fisk  
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1617 John F. Kennedy Blvd., Suite 1130  
Philadelphia, PA 19103  
[sfisk@earthjustice.org](mailto:sfisk@earthjustice.org)

**As to AEP:**

Gary O. Spitznogle  
Vice President, Environmental Services  
American Electric Power Service Corporation  
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Columbus, OH 43215  
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David Feinberg  
General Counsel  
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[dmfeinberg@aep.com](mailto:dmfeinberg@aep.com)

and

Janet Henry  
Deputy General Counsel  
American Electric Power Service Corporation  
1 Riverside Plaza  
Columbus, OH 43215  
[jjhenry@aep.com](mailto:jjhenry@aep.com)

**As to Gavin Buyer:**

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Gavin Power, LLC  
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Cheshire, OH 45620  
[Nicholas.tipple@lightstone.com](mailto:Nicholas.tipple@lightstone.com)

Karl A. Karg  
Latham & Watkins LLP  
330 North Wabash Avenue, Suite 2800  
Chicago, IL 60611

karl.karg@lw.com

and

Alexandra Farmer  
Kirkland & Ellis LLP  
1301 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
alexandra.farmer@kirkland.com

189. All notifications, communications, or submissions made pursuant to this Section shall be made by electronic filing and email delivery to all Parties if practicable, but if not practicable, then by overnight mail or delivery to the addresses set forth above. EPA may waive the requirement to submit a hard copy by overnight delivery, upon receipt of a written request from the submitter, by email or other means in writing. All notifications, communications, and transmissions sent by overnight delivery service shall be deemed submitted on the date they are delivered to the delivery service.

190. Any Party may change either the notice recipient or the address for providing notices to it by serving all other Parties with a notice setting forth such new notice recipient or address.

*II. Modify Appendix A (Environmental Mitigation Projects) as follows:*

*Appendix A, Section V, Paragraph A, 7<sup>th</sup> line is amended by replacing “three” with “four”.*

*Appendix A, Section V, the following Paragraphs are added:*

**E. Bus Replacement Projects**

1. AEP shall facilitate the replacement of existing public school and transit buses with new, more energy-efficient buses and thereby reduce emissions of NO<sub>x</sub> and PM. AEP shall maximize the environmental benefits of the project and shall seek and prioritize bus replacements with the greatest potential emissions reductions.



2. AEP shall submit a plan to EPA for review and approval, in consultation with the Citizen Plaintiffs, for the implementation of the Bus Replacement Projects.

Upon approval of the plan by EPA, AEP shall implement the plan. The plan shall include:

a. A description of how the Bus Replacement Project will be implemented, including how opportunities for bus replacement will be communicated to local communities and school districts;

b. A calculation of the maximum amount of Project Dollar credits that would be available per vehicle and per fueling infrastructure installation, based upon the class and size of the Eligible vehicle that was replaced and the cost of a New vehicle of the same class and size, and a fueling installation capable of supporting the New vehicle(s);

c. A timeline for initial and subsequent solicitations of applications from local communities and school districts to participate in the project, with the project to be completed within five years of the date of filing of this Sixth Joint Modification;

d. A description of the anticipated environmental benefits of the project, including an estimate of the emission reductions expected to be realized per vehicle, and the methodology and any calculations used in the derivation of such expected benefits; and

e. A commitment to require each Bus Replacement Project participant to certify that the criteria for eligibility set forth in Paragraphs 4 - 7 for each School Bus Replacement Project, or that the criteria set forth in Paragraphs 8 - 11 for each Transit Bus Replacement Project, as applicable, will be met.

3. As part of the periodic reports required by Section XI (Periodic Reporting) of the Consent Decree, AEP shall provide an update on the Bus Replacement Project. These reports shall continue until the conclusion of the Bus Replacement Project. The update shall address the steps taken by AEP during the reporting period related to the Bus Replacement Project, including the vehicles replaced, the fueling infrastructure installed, and the Project Dollars proposed to be credited for and actual cost of each vehicle and/or fueling installation completed during the prior year.

#### **School Bus Replacement Project**

4. To be eligible to participate in the Bus Replacement Projects, the public school district must be located in Indiana, Kentucky, North Carolina, Ohio, Pennsylvania, Virginia or West Virginia, and own the Eligible Buses that will be replaced as part of this Project with the following exceptions:

a. Public school districts may apply with state-owned buses as long as they receive an authorized letter from the state agency that owns the buses allowing the school district to acquire New School Bus(es) and scrap the Eligible School Bus(es);

b. Third-party school bus contractors who own the Eligible School Bus(es) serving public school districts are eligible to participate in the program, however third-party school bus contractors who lease the proposed bus(es) to be replaced are only eligible if the remaining lease on the vehicle equals or exceeds three years; and

c. Buses owned by Federal agencies are not eligible.

5. An Eligible School Bus is a bus that meets all of the following criteria:

- a. Is primarily used for the purpose of transporting 10 or more pre-primary, primary, or secondary school students to schools or homes;
  - b. Is rated Class 3-8, as defined by the Department of Transportation's vehicle service classifications;
  - c. Has a Gross Vehicle Weight Rating (GVWR) of at least 10,001 pounds;
  - d. Has accumulated at least 10,000 miles transporting students during at least one of the three prior calendar years, or has been in use for at least three days per week transporting students during the current school year;
  - e. Is operated within the following States: Indiana, Kentucky, North Carolina, Ohio, Pennsylvania, Virginia or West Virginia;
  - f. Has a diesel-powered engine with a model year of 1996-2009 or older; and
  - g. Is able to start, move in all directions and have all operational parts.
6. For a replacement to be considered eligible, the New School Bus must
- a. Be model year 2019 or later;
  - b. Operate in the same manner and over similar routes as the original school bus;
  - c. Meet all applicable engine standards, certifications, and/or verifications and shall be retained and operated for its useful life; and
  - d. Meet Federal safety standards and required warranties.

7. For the school bus replacement to be considered eligible, the school district must provide to AEP, and AEP must retain and provide to the Plaintiffs in AEP's annual report, documentation that each diesel bus that is being replaced is scrapped or rendered permanently disabled within 90 days of being replaced. More specifically:

- a. The preferred scrapping method is cutting a three-inch by three-inch hole in the engine block (the part of the engine containing the cylinders).
- b. Disabling the chassis should be completed by cutting through the frame/frame rails on each side at a point located between the front and rear axles.
- c. A signed certificate of destruction and digital photos of the engine tag (showing serial number, engine family number, and engine model year), the destroyed engine block, and cut frame rails or other cut structural components, or other evidence of destruction, as applicable, shall be provided.
- d. Equipment and vehicle components that are not part of the engine or chassis may be salvaged from the unit being replaced (e.g. plow blades, shovels, seats, tires, etc.).

#### **Transit Bus Replacement Project**

8. To be eligible to participate in the Bus Replacement Project, the transit bus system must be located in Indiana, Kentucky, North Carolina, Ohio, Pennsylvania, Virginia or West Virginia, and the participant must own the Eligible Transit Bus(es) that will be replaced as part of this Project.

9. An Eligible Transit Bus is a bus that meets all of the following criteria:
  - a. Is primarily used for public transportation for people in the transit bus system;

- b. Is rated Class 3-8, as defined by the Department of Transportation's vehicle service classifications;
- c. Has a Gross Vehicle Weight Rating (GVWR) of at least 10,001 pounds;
- d. Has accumulated at least 10,000 miles transporting people during at least one of the three prior calendar years;
- e. Is operated within Indiana, Kentucky, North Carolina, Ohio, Pennsylvania, Virginia or West Virginia;
- f. Has a diesel-powered engine with a model year of 1996-2009 or older; and
- g. Is able to start, move in all directions and have all operational parts.

10. For a replacement to be considered eligible, the New Transit Bus must:

- a. Be model year 2019 or later;
- b. Operate in the same manner and over similar routes as the original bus;
- c. Meet all applicable engine standards, certifications, and/or verifications and shall be retained and operated for its useful life; and
- d. Meet Federal safety standards and required warranties.

11. For the replacement to be considered eligible, the transit district must provide to AEP, and AEP must retain and provide to the Plaintiffs in AEP's annual report, documentation that each diesel bus that is being replaced is scrapped or rendered

permanently disabled within 90 days of being replaced, as set forth in Paragraph E.7.,  
above.

All other terms and conditions of the Consent Decree remain unchanged and in full effect.

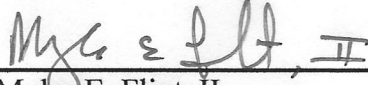
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**in**

***United States v. American Electric Power Service Corp., et al.***  
**Civil Action No. 99-CV-1182 and consolidated cases**

FOR THE UNITED STATES

Karen Dworkin  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice

  
\_\_\_\_\_  
Myles E. Flint, II  
Senior Counsel  
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United States Department of Justice  
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Washington, D.C. 2044-7611

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FOR THE UNITED STATES

**EVAN  
BELSER**

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BELSER  
Date: 2020.08.24  
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Evan Belser  
Acting Director, Air Enforcement Division  
Office of Civil Enforcement  
United States Environmental Protection Agency



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Sabrina Argentieri  
Attorney-Advisor, Air Enforcement Division  
Office of Civil Enforcement  
United States Environmental Protection Agency



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FOR THE STATE OF CONNECTICUT

WILLIAM TONG  
ATTORNEY GENERAL

By:

/s/ Lori D. DiBella, per authority

---

Lori D. DiBella  
Assistant Attorney General  
Office of the Attorney General  
Environment Department  
165 Capitol Avenue  
Hartford, CT 06106

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FOR THE STATE OF MARYLAND

BRIAN E. FROSH  
ATTORNEY GENERAL

/s/ Matthew Zimmerman, per authority

---

Matthew Zimmerman  
Assistant Attorney General  
Office of the Attorney General  
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FOR THE COMMONWEALTH OF  
MASSACHUSETTS

MAURA HEALEY  
ATTORNEY GENERAL



---

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FOR THE STATE OF NEW HAMPSHIRE

GORDON J. MACDONALD  
ATTORNEY GENERAL

K. Allen Brooks /s/

---

K. Allen Brooks  
Senior Assistant Attorney General  
Office of the Attorney General  
33 Capitol Street  
Concord, New Hampshire 03301

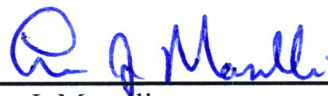
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FOR THE STATE OF NEW JERSEY

GURBIR S. GREWAL  
ATTORNEY GENERAL



---

Lisa J. Morelli  
Deputy Attorney General  
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P.O. Box 093  
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FOR THE STATE OF NEW YORK

LETITIA JAMES  
ATTORNEY GENERAL

/s/ Michael J. Myers, per authority

---

Michael J. Myers  
Senior Counsel  
Environmental Protection Bureau  
New York State Attorney General  
The Capitol  
Albany, NY 12224

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**FOR THE STATE OF RHODE ISLAND**

**PETER F. NERONHA  
ATTORNEY GENERAL**

**Gregory S. Schultz**

Digitally signed by Gregory S.  
Schultz  
Date: 2020.06.19 14:32:06 -04'00'

---

Gregory S. Schultz  
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FOR THE STATE OF VERMONT

THOMAS J. DONOVAN, JR.  
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read 'Thea Schwarz', is written over a horizontal line.

---

Thea Schwarz  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001



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FOR NATURAL RESOURCES DEFENSE  
COUNCIL, INC.

A handwritten signature in black ink that reads "Nancy S. Marks". The signature is written in a cursive, slightly slanted style. It is contained within a rectangular box that has a thin black border.

---

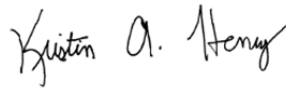
Nancy S. Marks  
Natural Resources Defense Council, Inc.  
40 West 20<sup>th</sup> Street  
New York, NY 10011

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FOR SIERRA CLUB

A handwritten signature in cursive script that reads "Kristin A. Henry".

---

Kristin Henry  
Sierra Club  
2102 Webster Street, Suite 1300  
Oakland, CA 94612

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FOR OHIO CITIZEN ACTION, CITIZENS ACTION  
COALITION OF INDIANA, HOOSIER  
ENVIRONMENTAL COUNCIL, OHIO VALLEY  
ENVIRONMENTAL COALITION, WEST VIRGINIA  
ENVIRONMENTAL COUNCIL, CLEAN AIR  
COUNCIL, IZAAK WALTON LEAGUE OF  
AMERICA, ENVIRONMENT AMERICA,  
NATIONAL WILDLIFE FEDERATION, INDIANA  
WILDLIFE FEDERATION, AND LEAGUE OF OHIO  
SPORTSMEN

A handwritten signature in cursive script, reading "Margrethe K. Kearney". The signature is written in dark ink and is positioned above a horizontal line.

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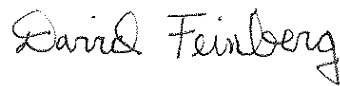
Margrethe Kearney  
Environmental Law and Policy Center  
35 East Wacker Drive, Suite 1600  
Chicago, IL 60601-2110

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FOR THE AEP COMPANIES



---

David M. Feinberg  
American Electric Power  
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Columbus, OH 43215

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FOR GAVIN POWER LLC

A handwritten signature in black ink, reading "William Lee Davis", is written over a solid horizontal line.

William Lee Davis  
Gavin Power, LLC  
7397 N. St Rt #7  
Cheshire, OH 45620